THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL No.2019 of 2002

10 October 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 16.09.1997 in W.P.No.28776 OF 1997 on the file of the High Court)

Between:

S.M. Hussain, S/o late L.M.Shaik

.. Appellant.

And

Siemens Ltd., 9-1-87/119/2,
1st Floor, St.John's Road, Secunderabad and another.

.. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL No. 2019 of 2002

JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

Heard party-in-person/appellant, Sri C.R. Sridharan, learned counsel appearing for the first respondent-management and the Government Pleader appearing for the second respondent.

The appellant, who is an employee of the first respondent-management, filed this appeal, *inter alia,* seeking to assail the order dated 16.09.1997 in W.P.No.28776 of 1997 allowing the Writ Petition filed by the first respondent-management herein seeking to set aside the order dated 04.08.1997 in I.D.No.15 of 1996 on the file of the second respondent herein ordering reinstatement of the appellant but without back wages.

It is relevant to note in the first instance that challenging the very same award, the appellant had filed a Writ Petition in W.P.No.19426 of 1999 in regard to the refusal of the relief to the extent of reinstatement

with back wages, continuity of service and all other consequential attendant benefits which was also taken up together along with W.P.No.28776 of 1997 and disposed of on the even date by the learned single Judge. However, no appeal was filed as against the said order in W.P.No.19426 of 1999 and no valid explanation is forthcoming.

Few facts which are necessary for disposal of this appeal are that the appellant, who was appointed in service on 13.09.1971, was sought to be transferred to Manipal on 03.10.1994 which was challenged by way of a suit in O.S.No.519 of 1994. The plaint of which was returned for presenting before the appropriate Court for want of jurisdiction and dismissed the I.A.No.1373 of 1994 filed for the same relief was dismissed as per the order dated 20.12.1994. The appellant challenged the said order unsuccessfully by way of a Revision in C.R.P.No.5329 of 1994, which was dismissed on 30.12.1994. Subsequently, as against the order in I.A.No.1373 of 1994, the appellant filed an appeal in C.M.A.No.19 of 1995 before the Additional Chief Judge, Hyderabad and the same was dismissed on 29.03.1995 and as against which, the appellant had unsuccessfully filed a Revision in C.R.P.No.1558 of 1995 and the same was also dismissed as per the order dated 28.04.1995. Later on, consequent upon such

holding of the return of plaint, admittedly the appellant did not choose to file the same before any appropriate Court. Subsequently, the first respondent issued a show-cause notice to the appellant on 21.12.1994 to explain for such a long un-authorized absence followed by a notice of enquiry on 17.01.1995, which was replied by the appellant on 15.02.1995. However, the first respondent-management passed the order of termination on 26.07.1995 on the very same ground of un-authorized absence. The said order of termination was sought to be challenged by raising a dispute which has ultimately taken up by I.D.No.15 of 1996 before the second respondent. After holding an enquiry, the second respondent passed an award on 04.08.1997 directing reinstatement of the appellant herein but without back wages and further holding that the appellant had ceased to be an employee of the Secunderabad office of the first respondent from 31.10.1997. It is this award, which was challenged by both the sides before the learned single Judge.

On considering the various submissions made on both the sides, the Writ Petition filed by the first respondent-management was allowed holding that the order of termination is perfectly valid and dismissed the Writ Petition filed by the appellant herein. In this appeal, though various contentions have been urged in detail and by going through the entire record, the only question which remains to be considered is

as to whether the impugned order of the first respondent-Management is valid ?

There is no dispute to the aforesaid chequered events which led to the filing of industrial dispute and passing of the award. No-doubt, the second respondent set aside the order of termination directing reinstatement of the appellant but without back wages, upholding the order of transfer and also holding that he had ceased to be an employee of the Secunderabad office of the first respondent from 31.10.1997. The fact remains that subsequent to the order of transfer i.e., 03.10.1994, there is absolutely no explanation forthcoming much less a valid one to justify his absence from duties. The appellant had unsuccessfully sought to challenge the order of transfer by a civil suit which was returned for want of territorial jurisdiction and the same was again repeatedly assailed by the appellant by way of Revisions and appeal, yet, it is not seen the light of the day nor disposal or its presentation before the appropriate Court. Be that as it may, the facts which staring at the appellant are that subsequent to the order of transfer on 03.10.1994 and as rightly held by the learned single Judge, there is absolutely no explanation forthcoming for his not joining duty and he has been assailing the same on some form or other unsuccessfully and such a long absence, which has resulted into the

order of termination, on the face of it is perfectly valid even in this Writ Petition or Appeal proceedings. The appellant has totally failed to make out any case or a valid explanation for his absence and in fact, he has been pursuing several other proceedings, which would itself show that he has been very much active and could have immediately join the services and come out with proper explanation. Having regard to the findings as arrived at by the learned single Judge and even on the facts, we do not find any merits to interfere with the same.

The Writ Appeal is dismissed. In the circumstances, no costs.

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B. PRAKASH RAO, J

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D. APPA RAO, J

10th October 2006.
Chvn.